



Attorney Docket No. 98731-000001/US

IN THE U.S. PATENT AND TRADEMARK OFFICE

APPLICANT(S): HACKMAN et al. CONF. NO.: 4019
APPL. NO.: 10/689,951 ART UNIT: 3744
FILED: October 22, 2002 EXAMINER(S): M.M. ALI
ENTITLED: AUTOMATIC LN2 DISTRIBUTION SYSTEM FOR HIGH-
PURITY GERMANIUM MULTI-DETECTOR FACILITIES

PRE-APPEAL BRIEF REQUEST FOR REVIEW

September 26, 2005

September 24 = Saturday


M/S AF
Commissioner for Patents
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

In response to the FINAL Office Action dated May 24, 2005 ("Action"), the Applicant requests review of the pending rejections before such time as an appeal brief is due in connection with the Notice of Appeal filed herewith. No claim amendments are being filed in conjunction with this request. A **Statement of Reasons** is attached below.

Respectfully submitted,

HARNESS, DICKEY & PIERCE, P.L.C.

By: 
Gregory P. Brummett
Reg. No. 41,646

STATEMENT OF REASONS

Sillat does not anticipate Claims 1, 6-11 and 13-14

As detailed in Applicants' **RESPONSE UNDER 37 C.F.R. § 1.116** ("Response") filed July 28, 2005, at pages 9-10, the Applicants respectfully maintain that one of ordinary skill in the art would not consider Sillat to disclose or suggest each of the recited limitations in claims 1, 6-11 and 13-14. In particular, the Applicants maintain that "sensor medium" and "sensor" are not equivalent elements and that the only "sensing" activity disclosed by Sillat occurs in P3, a device that is well removed from the flow passages 10 and 11.

The Applicants also respectfully maintain that the Examiner has not identified any textual or logical basis for the professed "belief" with regard to the "active" nature of neon contained in a reservoir. The Applicants submit that the neon does not require any power for operation or produce any output signal and does not, therefore, function as an "active" sensor. Indeed, the Applicants are hard pressed to imagine a more passive element. Accordingly, absent some evidence or logic to support this unusual reasoning, the Applicants respectfully contend that the rejections predicated on this "belief" must be withdrawn.

The Applicants respectfully maintain, therefore, that the Action fails to establish with the requisite degree of clarity that Sillat does, in fact, teach "each and every element as set forth in the claim." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Absent the establishment of such a teaching, the present rejection should be withdrawn.

McCulloch does not remedy the deficiencies of Sillat

As detailed in Applicants' Response at pages 11-12, the Applicants respectfully maintain that the Examiner continues to misinterpret the teachings of McCulloch with regard to the function of the cited LEDs, 274, 276 and 278. Indeed, as clearly disclosed by McCulloch, *these LEDs are simply indicators* provided on the front of controller 200 and are not used or positioned, in any fashion, to *sense* any condition or flow *within the distribution lines*.

The Applicants respectfully maintain that no teaching or suggestion has been identified in McCulloch with regard to either the suitability for or manner in which the disclosed *LED indicators* could be modified to act as "an active component for determining if fluid or liquid is present in the overflow passage" as required by Applicants' claims 2 and 12. The Applicants respectfully contend, therefore, that this rejection is defective and cannot properly be maintained on the present record. The Applicants respectfully request, therefore, that this rejection be reconsidered and withdrawn.

Maric does not remedy the deficiencies of McCullough and Sillat

As detailed in Applicants' Response at pages 12-15, the Applicants respectfully maintain that Maric does not teach or suggest a temperature sensor 70 that is positioned in a cryogenic liquid flow passage. The Applicants further suggest that no teaching or suggestion has been identified in Maric that would lead one of ordinary skill to a configuration in which "the active component is positioned within the hole and impinges into the through passage" of a sensor arranged in a cryogenic overflow line as recited in Applicants' claim 4.

The Applicants respectfully contend, therefore, that the Action has failed to establish that all the claim limitations are taught or suggested by the proposed combination of references and has failed to establish any colorable motivation for making the proposed combination from within those references absent inappropriate hindsight guided solely by the Applicants' disclosure. The Applicants respectfully maintain, therefore, that this rejection should be reconsidered and withdrawn.

The Action was prematurely designated as FINAL

As noted in Applicants' Response at pages 7-8, the Applicants respectfully maintain, *inter alia*, that:

the original rejections were NOT sufficiently supported by the Sillat Abstract alone and it was this deficiency, rather than any claim amendments by the Applicants, that required the application of the newly provided Sillat Translation to support the present rejections (although still inadequately). The Applicants, therefore, have been

denied a full and fair opportunity to address those rejections based on the Examiner's current interpretation and application of the full Sillat Translation.

Accordingly, the Applicants respectfully contend that the Sillat Translation is a "new" reference and that the present rejections based on this reference constitute rejections on newly cited art of claims not amended by Applicants. MPEP § 706.07(a). The Applicants respectfully contend, therefore, that the present Action was NOT properly designated as FINAL.

Although the Applicants agree that an Abstract may serve as a valid basis for a rejection, the noted deficiencies of the Abstract in this instance preclude any such presumption and does not, therefore, render "all previous actions ... ok."

Conclusion

The Applicants respectfully request that the pending rejections based on Sillat, McCullough and Maric be reconsidered and withdrawn and the pending claims allowed absent a new, non-final rejection based on more relevant prior art references.

* * * * *

END OF STATEMENT OF REASONS